**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE**

**MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929**

**WP(C).No. 14539 of 2006(E)**

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**AGAINST THE ORDER IN E.P. 572 /2002 IN O.S..1022/1999 of III ADDL.M.C.,TRIVANDRUM**

**.....**

**PETITIONER:**

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**S. BALAMURALI, AGED 43,**
**S/O. SREEDHARAN NAIR, H.C.6839,**
**M.P. CAMP, THYCAUD, RESIDING AT SARASWATHI VILASOM, KALLAMPALLY, SREEKARIYAM, THIRUVANANTHAPURAM.**

**BY ADV. SRI.R.T.PRADEEP**
**SRI.V.VIJULAL**

**RESPONDENT:**

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**K.V. VIKRAMANUNNI, RAMALAYAM,**
**ILLAMKULAM LANE, SREEKARIYAM,**
**REPRESENTED BY HIS POWER OF ATTORNEY RAMABHAI.**

**BY ADV. SRI.G.S.REGHUNATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007 ALONG WITH WPC NO. 14547 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WPC.NO.14539/2006 E**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1: COPY OF OBJECTION DTD. 4/03/2005.**

**EXT.P2: COPY OF SALARY CERTIFICATE DTD. 28/03/2005.**

**EXT.P3: COPY OF ORDER DTD. 4/01/2006 IN E.P.NO.572/02 IN O.S.NO.1022/99.**

**/TRUE COPY/**

*KSS*

**PIUS C. KURIAKOSE, J.**

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**W.P.(C) NO. 14539 of 2006**

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**Dated this the 9th day of July, 2007**

**JUDGMENT**

The parties in both these cases are the same and the petitioner is the Judgment debtor who impugns similar order passed by the Execution Court in two different Execution Petitions filed by the respondent against him. Under the impugned orders, the learned Execution Court has directed the arrest of the petitioner on the basis that in spite of sufficient means to pay off the decree debt, he has willfully neglected to pay. Even though the appendix of the order would indicate that the parties did not adduce any oral evidence, it is clear on reading of the order that both sides adduced evidence. The only documentary evidence which was available before the learned judue to hold that the petitioner is having a valid means was Ext.P1 salary certificate. But I notice that the learned Munsiff has not made any enquiry as to what was the attachable portion of the salary of

the petitioner, who is a police constable. His salary, he is conceded, is under attachment from other suits also. It is clear from the explanation to Section 51 of the Code of Civil Procedure that while calculating the means of the judgment debtor for the purpose of deciding his liability in execution, the property of the judgment debtor which is exempted from attachment in execution is to be excluded. Thus an enquiry was certainly necessary as to what is the attachable portion of the salary of the petitioner. Such enquiry is not seen conducted by the learned Musniff. For this reason, the impugned order will stand set aside. However, having regard to the totality of the circumstances of this case, I am inclined to do so only on condition .

Accordingly, I set aside Ext.P3 in both the cases and direct the Execution Court to conduct the further enquiry into the means of the petitioners giving due attention to what is the attachable portion of the salary of the petitioner and also as to whether the petitioner is possessed of any other means which will enable him to pay off decree debt, but on condition that till such time as enquiry is completed the petitioner will continue to pay to the decree holder in both the cases a sum of Rs.1,500/- each

(Rupees One Thousand Five Hundred) on the first of every month commencing from August 2007.

If the petitioner defaults the payment of the instalments, he will forfeit the benefit of this judgment which means that the impugned order will become operative. Once enquiry is completed, the learned Munsiff will hear both sides and pass fresh orders.

**PIUS C. KURIAKOSE,**
**JUDGE.**

dpk